

No. 32535-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

RUBEN A. RAMIREZ, Appellant.

BRIEF OF APPELLANT

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I. STATEMENT OF THE CASE

Ruben A. Ramirez was charged by information with felony harassment by threat to kill and/or harassing a criminal justice participant. (CP 1).

The defense made a CrR 3.5 motion to suppress statements made by Mr. Ramirez to police. Denying the motion, the court made these findings and conclusions:

II. FINDINGS OF FACT

2.1 On 3/31/2014 at 10:16 p.m., Officer Buescher responded to a disturbance at the Ephrata, WA Safeway and contacted the Defendant.

2.2 After temporarily detaining the Defendant, Officer Buescher determined that the Defendant had an active warrant and arrested him.

2.3 After being arrested, the Defendant made a number of unsolicited statements and insults to Officer Buescher.

III. CONCLUSIONS OF LAW

3.1 The Defendant's statements to Officer Joshua Buescher are admissible because they were made freely and voluntarily; furthermore the statements were:

. . . Not in response to interrogation or questioning. (CP 33-34).

The case proceeded to jury trial.

Officer Buescher was on duty March 31, 2014, as an Ephrata police officer when he responded a little after 10 p.m. to a disturbance call at the Safeway.(5/29/14 RP 31). Parking near the entrance, he saw a male, Mr. Ramirez, who matched the description of the subject causing the disturbance. (*Id.* at 32). As Mr. Ramirez walked through the first set of doors, the officer told him to stop. (*Id.*). But he continued walking so Officer Buescher put his hand on Mr. Ramirez's chest to get him to stop. (*Id.* at 33).

By then, Officer Joseph Downey had arrived and stayed with Mr. Ramirez while Officer Buescher went to talk to the store manager, the complaining party. (5/29/14 RP 34-35). The manager said Mr. Ramirez was belligerent, intoxicated, wanted beer, and was going to be denied service. (*Id.* at 35). After talking to the store manager, Officer Buescher ran Mr. Ramirez through dispatch and discovered he had an outstanding warrant. (*Id.*). The officer trespassed him and told him he was under arrest. (*Id.* at 35-36). While performing his official duties, Officer Buescher arrested Mr. Ramirez. (*Id.* at 36).

Uncooperative at that point, Mr. Ramirez was loud and upset. (5/29/14 RP 36). He raised his hands above his head and

slammed the metal wall of Safeway extremely hard. (*Id.* at 37). Mr. Ramirez was fairly complaint when Officer Buescher grabbed his arms to cuff him and no physical force was used to arrest him. (*Id.*). After Mr. Ramirez's right arm was cuffed and his left arm about to be cuffed, however, he said to Officer Buescher that he wished he would have punched him in the face when he had the chance. (*Id.* at 38). The officer did not respond to the comment. (*Id.*). Meanwhile, Mr. Ramirez called Officer Buescher the "N" word numerous times and made sexual comments about what the officer and his mother had done to him. (*Id.* at 38).

While being searched incident to arrest, Mr. Ramirez told Officer Buescher that the next time he saw him, he was going to shoot him. (5/29/14 RP 39). When the officer asked what he had just said, Mr. Ramirez again told him he was going to shoot him when he saw him next. (*Id.*). Officer Buescher took the threat seriously and believed Mr. Ramirez would carry out the threat. (*Id.* at 39). Explaining why he took this threat seriously, the officer said:

To begin with, the aggressive manner in which he slammed the wall, the fact that he was getting progressively more agitated during the contact, the statement that he wished he would have assaulted me when he had the chance, and then

that followed up by the comments, and then the specific threat that he was going to shoot me, and then when I asked him again, he said he was going to shoot me the next time he saw me, led me to believe that he was serious, and that goes a little bit further than most of the other threats that I've ever received. (*Id.* at 42).

Officer Joseph Downey arrived at the Ephrata Safeway around 10:15 on March 31, 2014, while Officer Buescher was talking to Mr. Ramirez. (5/29/14 RP 48). Officer Buescher told him he was under arrest and then arrested him. (*Id.* at 48-49). Officer Downey testified Mr. Ramirez became progressively more hostile verbally and was acting out physically. (*Id.* at 49). He heard Mr. Ramirez tell Officer Buescher that he should have punched him in the face and he was going to shoot him. (*Id.* at 50). Officer Downey also took the threats seriously. (*Id.*).

Mr. Ramirez testified in his own behalf. He did not recall threatening Officer Buescher. (5/29/14 RP 60).

No exceptions were taken to the court's instructions to the jury. (5/29/14 RP 66). The jury found Mr. Ramirez guilty of felony harassment. (*Id.* at 94; CP 92). The court sentenced him to a standard range sentence of two months. (CP 96). This appeal follows.

II. ARGUMENT AND MOTION TO WITHDRAW

In *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 18 L. Ed.2d 493 (1967), the Supreme Court provided the framework for appellate counsel to follow when concluding that an appeal would be frivolous:

[I]f counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support an appeal. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court – not counsel – then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal. . .

See also *State v. Wade*, 133 Wn. App. 855, 874, 138 P.3d 168 (2006), *review denied*, 160 Wn.2d 1002 (2007). Washington follows the *Anders* procedure. *State v. Jackson*, 87 Wn.2d 562, 566-67, 554 P.2d 1347 (1976). After reviewing the verbatim report of proceedings and clerk's papers, counsel finds no meritorious issues on appeal.

The only issues on appeal are (1) whether the court erred by Denying Mr. Ramirez's motion to suppress statements he made to

police and (2) whether the State's evidence was sufficient to support the conviction.

With respect to the admissibility of Mr. Ramirez's statements to police, the State acknowledged that they were made after he was arrested and in custody, but he was not given *Miranda* warnings. (5/21/14 RP 28-29). That being said, the State argued the statements were not made in response to any interrogation or questioning, but were made freely and voluntarily. (*Id.*). The court agreed and admitted the statements as there was no duress or coercion. The court was correct. *State v. Ortiz*, 104 Wn.2d 479, 484-85, 706 P.2d 1069 (1985), *cert. denied*, 476 U.S. 1144 (1986).

As for the sufficiency issue, the evidence must be viewed in a light most favorable to the State and the question is whether any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). Here, the State charged felony harassment by a threat to kill and/or harassment of a criminal justice participant. RCW 9A.46.020(2)(b). The defense was intoxication to the point where Mr. Ramirez could not form the requisite intent for the crime.

The court gave instruction 7 on voluntary intoxication. CP 89. The jury considered it, but nonetheless returned a guilty verdict. Based on the evidence presented by the State, a rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Hecht*, 179 Wn. App. 497, 510-11, 319 P.3d 836 (2014); *State v. Cross*, 156 Wn. App. 568, 234 P.3d 288 (2010).

III. CONCLUSION

Mr. Ramirez respectfully asks this court to independently review the record and determine if there were any errors below.

DATED this 25th day of March, 2015.


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